IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 363 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARUJU @ SAJERAO BABURAO - Appellant
(orig. Accused No.1)

Versus

STATE OF GUJARAT - Respondent

Appearance:
MR DEEPAK M SHAH for Appellant - Appointed
MR S.S. PATEL, APP for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 14/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant - original accused No.1 challenges the judgement and order dated 22nd April 1992 of the learned Additional Sessions Judge, Mehsana in Sessions Case No. 15 of 1992 convicting the appellant for the offence under section 302 of the Indian Penal Code and sentencing him to imprisonment of life and payment of fine of Rs.2,000=00, in default of which, to undergo simple imprisonment for a further period of one year and also convicting him for the offence under section 135 of the Bombay Police Act and sentencing him to undergo simple imprisonment for six months, with a direction that it will run concurrently with the other sentence.

2. The prosecution case was that the original accused Nos. 1 and 2 - Sarju and Gulabbhai and the two deceased persons, Pirsing and Vanrajsing, were friends. On 20th August 1991, they had gone together at 4.00 p.m. from Kalol. After consuming liquor, they were near Iffco cabin at about 8.00 p.m. under a tamarind tree at village Saij. They were seen by the prosecution witnesses at that time together when the accused No.1 Sarju and Pirsing were quarrelling and at that time, the accused No.1 was having a knife in his hands and in the next morning, it was known that both Pirsing and Vanrajsing were killed near about that place where there is a railway track. At 6.30 in the morning, the Station master was informed by the cabin-man, who in turn, informed the police and an inquest panchnama was made and both the dead bodies were sent for post mortem. Pirsing was having seven incised and piercing wounds and Vanrajsing was having a piercing wound cutting his lever. The post mortem was done on 22nd August 1991 and the time of death was fixed at 40 to 48 hours prior to the post mortem, which tallied with the time around which these two persons were killed during the night between 20th August 1991 and 21st August 1991. According to the prosecution, while the accused No.2 was holding Pirsing and Vanrajsing, the accused No.1 dealt knife blows to them on the vital parts of their body, which resulted in their death. The prosecution version is that the clothes of the accused No.1 and the knife discovered at his instance were having blood stains of blood group `B' and the blood group of both the deceased persons was `B'. The clothes of the accused No.1 were also having blood stains of that group, as per the chemical analyzer and

serologist's report. It was also found that the cut marks in the clothes worn by the two deceased persons could be caused by the muddamal knife.

3. Both the accused not pleaded not guilty. The trial Court, on the basis of the evidence on record, came to a finding that the appellant - accused No.1 had caused the death of Pirsing and Vanrajsing by giving them knife blows, but the part played by the accused No.2 was not clearly established and therefore, it gave benefit of doubt to the accused No.2 while convicting the accused No.1 for the offence under section 302 of the Indian Penal Code.

4. The medical evidence consisting of the deposition of Dr.Amratlal Patel exh.9 and the post mortem notes exhs. 10 and 12 show that the death of Pirsing and Vanrajsing was caused due to the injuries that they had suffered by a sharp cutting instrument like the muddamal knife. The vital organs of these two persons were cut due to corresponding external injuries caused to them. According to medical evidence, the probable cause of death of Pirsing was haemorrhagic shock due to injury to vital organ heart and spleen, while the probable cause of death of Vanrajsing was, haemorrhagic shock due to injury to lever.

5. The most important prosecution witness is Bachuji. He has stated in his deposition exh.32 that he knew both the sides. Both the accused used to come with Pirsing to Kalol. He had seen all the four of them near the tamarind tree, opposite a railway crossing at 8.00 p.m. on 20-8-1991 near village Saij when he was returning from Ahmedabad on his scooter to Kalol. At that time, he saw that all the four were quarrelling. When he halted to ask them as to what was the matter, he was told that it was their internal matter. He had seen that Pirsing and the accused No.1 Sarju were exchanging words. The accused No.1 was quarrelling by reference to some woman. In the next morning, he came to know about the double murder. He, therefore, went near that spot and saw the dead bodies of Pirsing and Vanrajsing lying there. In his cross-examination, he has reiterated that Pirsing and Sarju were exchanging abuses and Sarju was having a knife. He has denied the suggestion that they were fighting. He has stated that all the four were drunk. Most of the quarrel was between Pirsing and Sarju. He has reiterated that Sarju was having an open knife in his hand. They were exchanging words loudly. This witness is the only person who had seen all the four persons together before the death of Pirsing and

Vanrajsing and he had seen Pirsing and Sarju, the accused No.1 quarrelling and the accused No.1 having a knife in his hand. There is no eye witness to the incident of inflicting of the knife blows. Nagjibhai exh.46 had also seen Pirsing and three others around that time at that place on 20-8-1991, as deposed to by him at exh.46, but he does not give any further particulars. Keshaji has stated that, in the evening at about 7 O'clock, these four persons had come to his shop to purchase grams and Pirsing had purchased grams, while the three others were standing near his shop and he does not say anything further. Widows of both the deceased persons have been examined. Champaben, in her deposition exh.27, has stated that, on 19th August 1991 at about 3 O'clock, both the accused persons had come to her house and while leaving with them, she was told by her husband that there had been some quarrel with these persons and if he does not return in two days, she should make an inquiry. Kamlaben, wife of Vanrajsing, in her deposition exh.28, has stated that, on 20th August 1991, all the four persons had come to their house and when they had left at 4 O'clock, she was told by her husband that if he does not return by 21st August 1991, she should inquire.

5. Thus, in the evening of 20th August 1991 at 4 O'clock, all the four persons were together in the house of Vanrajsing, and they had gone out together. Thereafter, as noted above, they were found drunk and quarrelling by Bachuji at 8.00 p.m. near village Saij, as stated by him in his deposition exh.32, and, at that time, mainly Pirsing and the accused No.1 - Sarju were quarrelling and the accused No.1 was having a knife in his hand. Death of both Pirsing and Vanrajsing had occurred during that night, as per the medical and other evidence. The inquest panchnama was drawn after the dead bodies were notified by the station master to the police and the police reached the spot. The evidence of Bachuji is attacked on the ground that he had been a panch witness several times. Merely because he was a panch witness in some cases, that did not disqualify him. He had witnessed the incident of quarrel between the persons known to him while on his way to Kalol, and there was no reason for him to falsely implicate the accused persons. He does not attribute any blows to the accused No.1 and has, in fact, stated that he had not seen any blow being given by him, but had seen an open knife in his hand. It is obvious from the evidence on record that Pirsing and Vanrajsing were unarmed. Even the scratches which were found on the face of the accused No.1 at the time when he was arrested and sent for medical examination by Dr.

Harshad, were minor scratches, as deposed to by him at exh.14, and as mentioned in the medical certificate exh.15. The accused No.1 could be arrested only on 30th August 1991 and the scratches on his face had left only minor scars, with one of the scratches being infected near the left ear. We are satisfied from the deposition of Bachuji that he had seen all the four persons together and had seen a knife in the hand of the accused No.1, while quarrelling with Pirsing. This is a very important circumstance which connects the accused No.1 with the crime. There is a still more important corroborative fact which connects the accused No.1 with the crime beyond any shadow of doubt and that is the discovery of muddamal knife at his instance and the muddamal knife having blood stains which were found to be of blood group `B', which was the blood group of both the deceased persons. The panch witness Pratapji in his deposition exh.48 has fully supported the prosecution version. He has proved the discovery panchnama at exh.50 which shows that the accused No.1 had led the panchas to a place where he had hidden the muddamal knife. As stated in the panchnama, he had removed the earth and taken out the knife from a pit near a babul tree. As proved from the chemical analyzer and serologist's report at exh.55, the muddamal knife was having human blood of `B' group, which was the blood group of both the deceased persons. The clothes of the accused No.1 recovered under the panchnama exh.49 at the time of his arrest, were also bloodstained and that blood was also of group `B'.

7. We are, therefore, fully satisfied from the oral, documentary and circumstantial evidence on record that the accused No.1 had inflicted knife blows on both Pirsing and Vanrajsing and caused injuries to them, which were sufficient in the ordinary course of nature to cause their death. The participation by the accused No.2 in the crime was not established and he was acquitted and there is no appeal against that acquittal.

8. In the above view of the matter, we fully agree with the reasoning and findings of the learned trial Judge for holding the appellant - accused No.1 guilty of the offence under section 302 of the Indian Penal Code. Though there was no separate charge under section 302 of the Indian Penal Code framed against the accused No.1 and the charge against both the accused was under section 302 read with section 34 and read with section 114 of the Indian Penal Code, the contents of the charge clearly disclosed that it was the accused No.1 who had inflicted knife blows to both these deceased persons and caused their death. Therefore, even though no separate charge

was framed under section 302 of the Indian Penal Code, there was no prejudice caused in convicting him for the offence under section 302 of the Indian Penal Code. As held by the Supreme Court in Kishore Chand v. State of Himachal Pradesh, reported in AIR 1990 SC 2140, if, from the evidence, it is established that any one of the accused have committed the crime individually, though the other accused were acquitted, even without any independent charge under section 302, the individual accused would be convicted under section 302, I.P.C. simpliciter. It was held that the omission to frame an independent charge under section 302 IPC does not vitiate the conviction and sentence under section 302, I.P.C. In Hem Raj v. The State (Delhi Administration) reported in AIR 1990 SC 2252, the Supreme Court held that there was no illegality in convicting the appellant under section 302 (simpliciter) though there was a constructive charge against all the accused inclusive of appellant under section 302 read with section 34, I.P.C., since the evidence had disclosed that it was only the appellant who inflicted the injury which proved fatal.

8. We, therefore, confirm the impugned decision convicting the appellant - original accused No.1 for the offence under section 302 of the Indian Penal Code and the sentence imposed. The appeal is, therefore, dismissed.

AUGUST 14, 2001 [R.K.ABICHANDANI, J.]

[SHARAD D. DAVE, J.]

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